

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

- Group I: Claims 55-121, drawn to a physiologically acceptable, transparent or translucent anhydrous cosmetic composition.
- Group II: Claim 122, drawn to a method of treating keratinous material of a human.
- Group III: Claims 123-150, drawn to a method of making a cosmetic product.

In addition, an election of species is required as indicated:

- Species Election A: Election of one specific fully identified compound as the ester oil is required. (Claims 56-67)
- Species Election B: Election of one fully identified ester oil is required. (Claims 69-73)
- Species Election C: Election of silicone oil present or absent; if present, election of volatile or non-volatile is required. Identification of a particular compound is required.
- Species Election D: Election of non-volatile oil present or absent; if present identification of a specific compound or formula is required.
- Species Election E: Election of solid particles present or absent is required.
- Species Election F: Election of nonsilicone oil present or absent is required.

Applicants elect, with traverse, Group I, Claims 55-121, drawn to a physiologically acceptable, transparent or translucent anhydrous cosmetic composition, for examination. As a single disclosed Species, for examination purposes only, Applicants provisionally elect the following:

- Polymer Specie: Nylon 611/Dimethicone copolymer (silicone polyamide of according to formula IV)
- Species Election A: isononyl isononanoate
- Species Election B: isononyl isononanoate
- Species Election C: silicone oil absent
- Species Election D: non-volatile oil absent
- Species Election E: solid particles present
- Species election F: nonsilicone oil absent

Claims 55-57, 59-60, 62-66, 68-73, 87-89, 94-95, 97-98, 102, 105-109, 111-127, 129-130, 132-136, 138-140, 142-143 and 146-150 read on the elected species. All these claims are generic.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - III do not relate to a single general inventive concept because “their common technical feature is not novel.” Barr et al. (U.S. 6,051,216) is cited as teaching a polymer with two amide groups and weight average molecular weight of approximately 2200 and an ester oil combination where the ester oil is isopropyl myristate. The Office alleges that “since the common technical feature was known [in is known] in the art, this technical feature cannot be deemed as special.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(5) A product, a process specially adapted for the manufacture of said product and a use of said product; . . .”

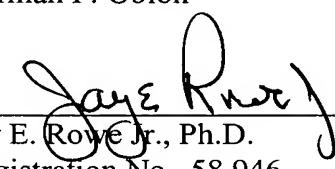
Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-III with respect to 37 C.F.R. § 1.475(b)(5).

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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